

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRIS J. JACOBS III,

Petitioner,

v.

PETER HUIBREGTSE,

Respondent.  
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ORDER

10-cv-805-bbc

Petitioner Chris Jacobs III, a prisoner at the Wisconsin Secure Program Facility, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, in which he challenges a conviction he received in 1998 for kidnapping and false imprisonment. He has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1).

This is no less than the third time petitioner has attempted to challenge this conviction in this court. In case no. 09-cv-32-bbc, I reminded petitioner that he had filed a habeas corpus petition challenging this same conviction and sentence in 2006. District Judge John Shabaz dismissed the petition with prejudice after determining that it was untimely. Jacobs v. Schneider, 06-C-74-S, Op. and Order, dkt. #23 (W.D. Wis. Aug. 29, 2006).

Under 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or successive application for habeas relief in the district court unless he first seeks and obtains an order from the appropriate court of appeals authorizing the district court to consider the application. A “second or successive” petition is one in which the prisoner is challenging the same conviction that he challenged in a previous petition that was decided on the merits. In re Page, 179 F.3d 1024, 1025 (7th Cir. 1999). A dismissal for procedural default such as untimeliness is a decision on the merits because, in that case, “the [petitioner] has no further opportunity to obtain a disposition on the merits of his or her claims in the state courts.” Henderson v. Lampert, 396 F.3d 1049, 1053 (9th Cir. 2005). Accord Carter v. United States, 150 F.3d 202, 205-06 (2d Cir.1998); Hawkins v. Evans, 64 F.3d 543, 547 (10th Cir. 1995). Because petitioner has not obtained an order from the Court of Appeals for the Seventh Circuit authorizing him to file his petition, I must dismiss it. Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (“A district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.”).

#### ORDER

IT IS ORDERED that the petition of Chris Jacobs III for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for petitioner's failure to obtain the authorization

required by 28 U.S.C. § 2244(b)(3)(A).

Entered this 26th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge